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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America, ex rel. the State) CR 11-8134-PCT-JAT
10 of Arizona,)

11 Plaintiff,)

12 vs.)

13 Daniel Patrick Rawlins,)

14 Defendant.)
15

ORDER

16 Defendant has moved to reconsider this Court's order remanding this case.¹
17 Defendant argues two primary reasons for reconsideration: 1) this Court remanded the case
18 before Defendant could file his declaratory judgment petition under 28 U.S.C. § 2201; and
19 2) this Court cannot sua sponte remand for defects in the procedures governing removal.

20 First, Defendant removed a criminal case. Defendant has no ability to bring a civil
21 declaratory judgment action within a criminal prosecution. Therefore, the fact that the Court
22 remanded without considering the substance of Defendant's to-be-filed declaratory judgment
23 action is not a basis for reconsideration.

24 Second, Defendant is correct that this Court cannot sua sponte raise defects in removal
25 procedures in civil cases. *Kelton Arms Condominium Owners, Ass'n, Inc. v. Homestead*
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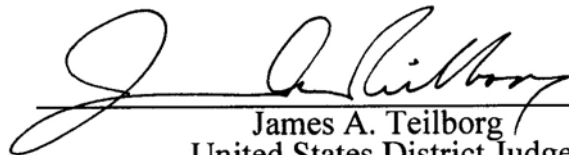
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28 ¹ The Court interprets this as a motion under Federal Rule of Criminal Procedure
33(a) and (b)(2).

1 *Insurance Co.*, 346 F.3d 1190, 1191 (9th Cir. 2003). However, this is not a civil case, this is
2 a criminal case. Moreover, this Court did not rest its remand order on the procedural defect
3 in removal (that the notice of removal was not filed within 30 days of arrangement). Instead,
4 the Court remanded the case because Defendant failed to substantively show that his charges
5 fell within the category of state criminal prosecutions over which this Court could have
6 jurisdiction. *See* Doc. 3. Therefore, the Court's basis for remand also does not provide a
7 reason for reconsideration.

8 Thus, based on the foregoing,

9 IT IS ORDERED that the motion for reconsideration (Doc. 5) is denied.

10 DATED this 28th day of July, 2011.

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14 James A. Teilborg
United States District Judge
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